BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOHN H. ROY)

Appearances:

For Appellant: John H. Roy, in pro. per.

For Respondent:, Jack E. Gordon
Supervising Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John H. Roy against proposed assessments of additional personal income tax in the amounts of $35.79, $40.87, and $375.37 for the years 1969, 1970, and 1971, respectively.

Appellant teaches engineering and marketing related courses at Citrus Junior College in hzusa. He also engages in some independent consultation in marketing related areas. For each of the years in issue appellant claimed a deduction in the amount of $1, 029.84 for the business use of his home. Respondent reduced this deduction to $255.00 for each year.

For each of the appeal years respondent substantially' reduced appellant's claimed deductions for charitable contributions for lack of substantiation. The amounts of cash and noncash contributions claimed and the amounts disallowed are set out in the following table:

	Amount Claimed		Amount Disallowed		Amount Allowed	
Year	Cash	Noncash	Cash	Noncash	Cash	Noncash
1.969	$350	$349.00	$275	$240.50	$75	$108.50
1.970	350	295.25	275	205.25	75	90.00
1971	350	165.00	275	115.00	75	50.00

In 197 1 appellant deducted $3, 538. 00 for expenses incurred during a six week trip to Africa and Europe. Appellant maintains that this trip improved his teaching ability and helped him satisfy the professional growth requirements of his employment, and concludes that the amount should be deductible as an educational expense. Respondent denied the entire amount on the basis that there was no relationship between appellant's occupation and his travels.

The issues for determination are:

1. Whether appellant is entitled to deductions for the use of part of his home as an office in amounts -larger than those allowed by respondent;

2. Whether appellant is entitled to deductions for charitable contributions in amounts larger than those allowed by respondent; and

3. Whether appellant is entitled to deduct the expenses incurred on his 1971 trip to Europe and Africa as educational expenses.

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1. Home Office Expense

Appellant, who is unmarried, built the house in question after he became a teacher and consultant. He designed the house and built much of it himself. In planning the house he specifically designed an 800 square foot area to be used primarily as an office. The total area of the house is 1,400 square feet. In addition to the normal living facilities the office area contains: a desk, office equipment, filing cabinets, drafting tables, special lights, and special wiring for power tools. The area also includes: a shop complete with work benches, tool cabinets, shelves, a welder, saws, miscellaneous tools, and equipment. Appellant is not furnished an office at school. Instead he uses the area in his home to: prepare lectures, work out technical problems to be given to his students, build models for demonstrations, edit films used in lectures and demonstrations, grade papers, read and review technical publications, and to store tools used in his work. Appellant has also written three or four books in the office area of his house.

Section 17202 of the Revenue and Taxation Code allows a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." On the other hand, section 17282 prohibits any deduction for "personal, living, or family expenses."

In the area of deductions claimed for home office expense, it is often difficult to discern the line separating deductible ordinary and necessary expenses from nondeductible personal expenses. (Compare Newi v. Commissioner, 432 F. 2d 998 with Bodzin v. Commissioner, 509 F. 2d 679.) Each case must turn on its own facts. (Newi v. Commissioner, supra.) In the instant matter we are impressed by several facts: appellant was not provided with an office for his teaching duties, the area used as an office was specifically designed for that purpose and included many features not ordinarily found in the typical home, and the uncontroverted testimony of appellant with regard to the tasks he performed in the office area. We believe that appellant has established that the use of part of his home for an office constituted an ordinary and necessary business

expense in that it was appropriate and helpful to the performance of his duties .as a teacher and consultant. (See generally Newi v. Commissioner, supra; Hall v. United States, 387 F. Supp. 612; Clarence Peiss, 40 T. C. 78; Bruce B. Steinmann, T. C. Memo., Nov. 22 1971; James L. Denison, T. C. Memo., Sept. 28, 1971; Marvin L. Dietrich, T. C. Memo., July 6, 1971.)

Respondent argues that appellant has failed to establish the exact portion of time he used the premises for business purposes, and concludes that he is not entitled to a deduction greater than the amount arbitrarily allowed. It is true that appellant did not present a breakdown of the hourly use of the space. However, we believe that he amply demonstrated that, of the total time the area in question was used, it was used for business purposes at least 50 percent of the time. (See George W. Gino, 60 T. C. 304, appeal docketed, No. 74-1 484, 9th Cir., Dec. 28, 1973.) In view of the record we also believe that appellant's determination that one-half of the house's total area was used for business purposes was reasonable.

Respondent also challenged the depreciable basis claimed by appellant for the house. However, appellant demonstrated at the hearing that the cost basis of his house was at least as great as the amount claimed. Accordingly, we conclude that, with the exception of the telephone bills that were deducted elsewhere on the returns, appellant's claimed deductions for home office expense were correct and should be allowed.

2. Charitable Contributions

During the years in issue appellant deducted charitable contributions composed of cash and noncash gifts. Respondent denied a substantial amount of the claimed contributions on the basis that appellant had failed to substantiate the gifts. The details of the amounts claimed and the amounts disallowed are set forth in the table above.

For 1969 and 1970 appellant submitted receipts from the Salvation Army evidencing gifts of property. Included in the 1.969 contributions were a washer and dryer and a substantial

amount of clothing. The 1970 donations included a 21 inch RCA television set and a large amount of clothing. Appellant estimated the fair market value of the items contributed as of the date of the, gift as $349.00 for 1969 and $295.25 for 1970. Respondent offered no evidence to refute the fact that the items claimed were actually given or that appellant's valuation was erroneous. Rather, respondent merely reduced the claimed contributions by an arbitrary amount. Since appellant' s valuation is not unreasonable and respondent has offered no other evidence we conclude that appellant's noncash contributions for 1969 and 1970 are correct as claimed. (See Alfred F. Pepperman, T. C. Memo. , March 4, 1963; Dan R. Hanna, Jr., T. C. Memo., June 6, 1951.)

Appellant also claimed noncash contributions to the Salvation Army for 1971 in the amount of $165.00. No receipts for these contributions, which allegedly included a used TV set valued at $65.00 and clothing valued at $100.00, were submitted. Respondent reduced the amount claimed to $50.00. We believe that the amount respondent allowed 'as a deduction was unreasonable. In view of all the evidence, we conclude that appellant should have been allowed a deduction for noncash charitable contributions in the amount of $100.00 for 1971. (See Alfred F. Pepperman, supra; Dan R. Hanna, Jr. , supra.)

During each of the years in issue appellant deducted cash contributions of $350.00. Very little documentation was offered to substantiate these items. However, appellant testified that most of the contributions in question were small amounts made under circumstances where obtaining a receipt was impractical if not impossible. Based upon the limited record we believe that appellant made cash contributions of $150.00 each year and that respondent's adjustment was unreasonable. (See Henry W. Berry, T. C. Memo., Aug. 12, 1969; Francis M. Ellis, T. C. Memo., May 1, 1967.)

Our determination of appellant's allowable deductions for charitable contributions for the years in issue are set out in the following table:

	Amount Claimed		Amount Allowable	
Year	Cash	Noncash	Cash	Noncash
1969	$350	$349.00	$150	$349.00
1970	350	295.25	150	295.25
1971	350	165.00	150	100.00

3. Education Expenses

The final issue for resolution is whether appellant's travel expenses incurred during 1971 while visiting Europe and Africa were deductible as "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" within the meaning of section 17202 of the Revenue and Taxation Code. To the extent that education and travel expenses fall into this category, a deduction is allowed. In the educational context, "ordinary and necessary" has been interpreted to mean "appropriate and helpful". (See Lee J. Roy, T. C. Memo., June 12, 1969.)

The regulations provide, in part:

> Expenditures made by a taxpayer for his education are deductible if they are for education (including research activities) undertaken primarily for the purpose of:
>
> (A) Maintaining or improving skills required by the taxpayer in his employment or other trade or business, or
>
> (B) Meeting the express requirements of a taxpayer's employer, or the requirements of applicable law or regulations imposed as a condition

> to the retention by the taxpayer of his salary, status or employment. (Cal. Admin. Code, tit. 18, reg. 17202(e), subd. (1).) (Emphasis added.)[1/]

The term education in the above regulation is not restricted to the conventional meaning of instruction in a school, college, or university. It has been recognized that "travel" may, under certain circumstances, be a form of education the cost of which is deductible. However, as a general rule a taxpayer's expenditures for travel as a form of education shall be considered as primarily personal in nature and not deductible. (See Cal, Admin. Code, tit. 18, reg. 17202(e), subd. (3); Lee J. Roy, T. C. Memo. , supra.)

Thus, to prevail on this issue, appellant must establish that his travels abroad in 1971 were undertaken primarily to obtain education. Preliminarily, it should be noted that respondent allowed appellant to deduct educational expenses for tuition, travel, etc. , in the amounts of $1,765.00, $2,247.00, and $4,036.00 for the years 1969, 1970, and 1971, respectively. The amount allowed in 1971 was in addition to the amount presently in controversy.

In support of his position appellant maintained that, in order to retain his teaching position, he was required by his employer to travel, attend formal college courses, or fulfill certain professional reading or writing requirements. These annual activities were reported to the employer in the form of a professional growth report. Appellant stated that he was credited with an outstanding professional growth report during 1971. However, appellant did admit that the college courses taken locally would have fulfilled his professional growth requirements, and that he was not required to travel abroad.

1/ The federal regulations were liberalized in 1967 by eliminating the subjective "primary purpose" test and permitting a deduction for educational travel provided it has a direct relationship with the taxpayer's employment or other trade or business. (See Treas. Reg. § 1. 162-5(d) (1967): Krist v. Commissioner, 483 F.2d 1345,' 1348.) However,the Franchise Tax Board has not followed the Internal Revenue Service's lead and has retained the "primary purpose" test.

Appellant testified that during his trip he visited seaports, factories, diamond mines, and water projects. He took pictures during these visits for use in his engineering courses. He also talked to bankers, lawyers, and teachers during the trip.

We have no doubt that appellant's experiences in Europe and Africa were of educational value. Nor do we doubt that appellant used every opportunity in the classroom to relate these experiences to his students. However, the fact remains that appellant's trip was essentially 8 vacation. We arc unable to differentiate appellant's travels from the conventional travels of other tourists. (See generally Esther M. Rosenberg, T. C. Memo. , Oct. **22, 1969;** Lee J. Roy, supra.) Accordingly, we must conclude that appellant's 1971 travels abroad were not undertaken primarily to obtain education and are not deductible.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of John 1-I. Roy

1'1' IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of John H. Roy against proposed assessments of additional personal income tax in the amounts of $35.79, $40.87, and $375.37 for the years 1969, 1.970, and 1971, respectively, be and the same is hereby modified in accordance with the opinion of the board, and in all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 8th day of March, 1.976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTE ST: _____, Executive Secretary